

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

THE TEDDY BEARYS LTD,

Plaintiff,

~ against ~

DOVER PUBLICATIONS, INC.;
and **THEODORE MENTEN,**

Defendants

Index No. 2:18-cv-03436-ADS-AYS

**AFFIDAVIT IN SUPPORT OF O.S.C.
TO WITHDRAW AS COUNSEL**

STATE OF NEW YORK)

) ss.

COUNTY OF QUEENS)

BARUCH S. GOTTESMAN, ESQ., counsel for the Plaintiff being duly affirmed, deposes and states the following under penalty of perjury:

1. I filed this case on behalf of the Plaintiff in the above-captioned matter and am the counsel for the Plaintiff **THE TEDDY BEARYS LTD.** I am fully familiar with the facts and circumstances described below based on my representation of the Plaintiff in this matter and from my review of relevant documents and communications.

2. I respectfully submit this Affidavit in support of an application pursuant to Local Rule 1.4 of the Local Rules for the United States District Court for the Eastern District of New York for an Order directing Plaintiff to show cause why an order should not issue:

- a. Granting Baruch S. Gottesman, Esq. leave to withdraw as counsel and be removed from the docket as counsel of record;
- b. Staying this action for 60 days to provide Plaintiff the opportunity to obtain substitute counsel to represent them going forward; and
- c. Such other and further relief as the Court may deem just and proper.

3. This case involves an certain intellectual property created by the Plaintiff's principal which the Complaint alleges was violated by the Defendants.

4. On January 20, 2019, Ms. Irene Patricia Scott (the principal of the Plaintiff) e-mailed myself and the Court of her intention to remove myself as counsel and obtain substitute counsel.

5. At my client's request I held off on filing a Motion for Withdrawal until she obtained substitute counsel, however, no substitute counsel has been obtained so at this time, and with notice to my client (including through the service of the paperwork related to this Motion) I respectfully request leave to withdraw.

6. The relevant rule provides:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by the order. Such an order may be granted only upon a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

Local Civil Rule 1.4.

7. "Under New York law, good cause for withdrawal exists where there are irreconcilable differences with respect to the proper course to be pursued in the litigation, where the client flatly challenged counsel's loyalty and professional integrity, or where the relationship between plaintiffs and their attorney has deteriorated to the point where further representation is inappropriate." Bonnaig v. Nuñez, 2012 U.S. Dist. LEXIS 176876, at *10 (S.D.N.Y. Dec. 11, 2012) *citing* Karimian v. Time Equities, Inc., No. 10 Civ. 3773, 2011 U.S. Dist. LEXIS 51916, 2011 WL 1900092, at *4 (S.D.N.Y. May 11, 2011)

8. In this case, counsel and the client have irreconcilable differences about the progress of case and the litigation strategy to be pursued. The client has dismissed me but has asked me to remain until substitute counsel can join and for that reason the Undersigned respectfully requests a stay for 60 days for her to obtain substitute counsel.

9. Fact Discovery is supposed to be completed by June 28, 2019, and given that the Plaintiff is a single-owner company who have disclosed the majority of their Discovery in the Complaint, a stay should not adversely affect the time to complete Discovery and the current scheduling.

10. Before submitting this application for an Order to Show Cause, a draft of this Affidavit and accompanying paperwork was sent to the client who does not object to its filing or the underlying relief sought here; except that she wanted me to emphasize to the Court that this remains a "live" case and that she definitely intends to pursue it. My client also asked that I emphasize to the Court that she is very occupied with caring for ill family members and appreciates if the Court can grant a stay so that she has time to work on obtaining substitute counsel for this case.

11. Accordingly, Baruch S. Gottesman, Esq., respectfully requests that this Court grant this proposed Order to Show Cause and allow Baruch S. Gottesman, Esq., to withdraw as counsel for **THE TEDDY BEARYS LTD.**, to be removed from the docket as counsel of record, and the matter be stayed by 60 days for Plaintiff to obtain substitute counsel

12. This application is being brought by Order to Show Cause and no prior application for the relief requested in this application has been made.

13. As indicated above, the Plaintiff was shown a draft of this Affidavit and accompanying paperwork and does not object to the relief sought. An e-mail and fedex copy to the client will be sent at the same time that this application is filed by ECF.

WHEREFORE, Baruch S. Gottesman, Esq. respectfully requests that this Court grant this Order To Show Cause and allow Baruch S. Gottesman, Esq., to withdraw as counsel for **THE TEDDY BEARYS LTD.**, to be removed as counsel of record from the docket, staying the case for 60 days, together with whatever further relief the Court deems just and proper.

DATED APRIL 10, 2019

RESPECTFULLY SUBMITTED, 

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